

05/13/2010 10:17 FAX 5106373507

FED PUBLIC DEFENDER

→ OAK US ATTY

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9 Attorneys for the United States of America

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 NAKIO TOKESHI MASON,  
17 a/k/a "Nakio Toshiki Mason,"  
18 a/k/a "Kio,"

19 Defendant.

No. CR-10-00291 DLJ

STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
PRODUCTION OF CONFIDENTIAL  
DISCOVERY

20 Plaintiff, by and through its attorney of record, and the defendant, by and through his  
21 attorney of record, hereby stipulate and ask the Court to find as follows:

22 1. A federal grand jury has returned an indictment charging the defendant with  
23 Possession with Intent to Distribute, and Distribution of, Methamphetamine in violation of 21  
24 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii).

25 2. The government believes that the proposed protective order is necessary to  
26 preclude some discovery materials, which may contain the identities of potential witnesses  
27

28 STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL DISCOVERY

FILED

MAY 18 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 and/or cooperating witnesses or information from which those identities may be discovered,  
2 from being disseminated among members of the public and to the defendant. Specifically, the  
3 government believes that the proposed protective order will greatly reduce the possibility that  
4 individuals will misuse discovery materials to identify, intimidate, and/or harm witnesses and/or  
5 defendants.

6 3. Defendant and his defense counsel deny that any person would be endangered by  
7 the defendant's possession of any discovery material in this matter. The parties agree that no  
8 inference should be drawn about the defendant's dangerousness because of his agreement to  
9 enter into this stipulation and be subject to the protective order.

10 4. The parties agree that the following conditions, if ordered by the Court, should  
11 serve the government's interest in protecting witnesses, defendants, and other members of the  
12 community and reduce the risk of retribution against cooperating witnesses by precluding the  
13 circulation of these documents and digital media (e.g., CD-ROMs, DVDs, and digital  
14 photographs) throughout the prison system and the community, while permitting the defense to  
15 obtain discovery required by Federal Rule of Criminal Procedure 16 and the United States  
16 Constitution. Accordingly, the parties jointly request that the Court order as follows:

17 a. For purposes of this Order, the term "defense team" refers to: (1) the  
18 counsel of record for the defendant; (2) defense investigators assisting the defense team with this  
19 case; (3) employees of the defense team's law office; and (4) any expert witnesses who may be  
20 retained or appointed by the defense team. For purposes of this Order, a term "defense team"  
21 does not include the defendant.

22 b. The government is authorized to provide the defense team with discovery  
23 required by F.R.Cr.P. 16 and may, in its discretion, designate any discovery produced as  
24 "Confidential Discovery" to be governed by the terms of this protective order. The government  
25 may designate discovery as confidential by marking such discovery as "CONFIDENTIAL" and  
26 shall produce such discovery on a document, CD, or DVD marked "WARNING: CONTENTS  
27 SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED COPYING OR VIEWING IS  
28

STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL DISCOVERY

1 SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT.”

2 c. The defense team shall not permit anyone, including the defendant, to  
3 have possession of Confidential Discovery pursuant to this Order other than the defense team.

4 d. The defense team shall not divulge the contents of any Confidential  
5 Discovery provided pursuant to this Order to anyone other than the defendant. A defense team  
6 member may show Confidential Discovery to the defendant only in the physical presence of a  
7 defense team member, and may not permit the defendant to have physical possession of the  
8 Confidential Discovery.

9 e. The defense team shall not permit Confidential Discovery provided  
10 pursuant to this Order to be outside of the defense team’s offices, homes, vehicles, or personal  
11 control. The defense team may take Confidential Discovery into a custodial facility to show it to  
12 the defendant, but, as explained above, the defense team must maintain physical possession of  
13 the Confidential Discovery and may not allow the defendant to have physical possession of the  
14 Confidential Discovery.

15 f. In the event that one of the parties files a pleading that references or  
16 contains Confidential Discovery or information therefrom, that filing must be made under seal.

17 g. The defense team shall return all Confidential Discovery provided  
18 pursuant to this Order to the government fourteen calendar days after any one of the following  
19 events, whichever occurs latest in time: dismissal of all charges against the defendant; the  
20 defendant’s acquittal by court or jury; the conclusion of any direct appeal; the expiration of the  
21 time period for filing a motion pursuant to 28 U.S.C. § 2255; or the district court’s ruling on any  
22 motion filed pursuant to 28 U.S.C. § 2255. In the event that the defense team has made notes or  
23 marks on the Confidential Discovery constituting work product the defense team shall return the  
24 materials to the government in a sealed container labeled “WORK PRODUCT-DESTROY.”

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STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL DISCOVERY

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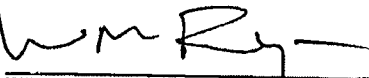
2 h. After return of the materials, the government may destroy the Confidential  
3 Discovery.

4 IT IS SO STIPULATED.

5  
6 DATED: 5/13/10

Respectfully submitted,

7  
8 JOSEPH P. RUSSONIELLO  
United States Attorney

9 

10 WADE M. RHYNE  
11 Assistant United States Attorney

12  
13 DATED: 5-13-10

14   
15 JOHN PAUL REICHMUTH  
16 Counsel For Defendant

17 ~~[PROPOSED]~~ ORDER

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby  
19 authorized, pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the  
20 defense team and may designate discovery to be governed by this protective order as  
21 Confidential Discovery. The parties are hereby ordered to comply with the conditions set forth  
22 in paragraphs 4(a)-(h) of this stipulation and order pursuant to Federal Rule of Criminal  
23 Procedure 16(d)(1).

24  
25 DATED: 5-18-10

26   
27 HON. D. LOWELL JENSEN  
28 UNITED STATES DISTRICT COURT JUDGE

STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL DISCOVERY